



3410–11–P; 4310–55–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS–R7–SM–2011–0068]

[FXFR13350700640L6-123-FF07J00000]

RIN 1018–AX95

Subsistence Management Regulations for Public Lands in Alaska—Subpart C—Board

Determinations; Rural Determinations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule; extension of compliance date and request for comments.

SUMMARY: This final rule extends the compliance date for the final rule that revised the list of nonrural areas identified by the Federal Subsistence Board (Board). On May 7, 2007, the Board published a final rule changing the rural determination for several communities or areas in Alaska. These communities had five years following the date of publication to come into compliance. In 2009 the Secretary of the Interior initiated a review of the Federal Subsistence Program. An ensuing directive was for the Federal Subsistence Board to review its processes for determining the rural and nonrural status of communities. As a result, the Board has initiated a

review of the rural determination process and the rural determination findings. The Board finds that it is in the public's interest to extend the compliance date of the 2007 final rule until the review is complete or in 5 years, whichever comes first.

DATES: *Compliance:* The compliance date for the final rule revising 36 CFR 242.23 and 50 CFR 100.23 published May 7, 2007 (72 FR 25688), and effective June 6, 2007, is extended until either the rural determination process and findings review is completed or 5 years, whichever comes first. We will publish a document announcing the compliance date in the **Federal Register**.

Comments: Comments will be received until [Insert date 45 days after the date of publication in the **Federal Register**].

ADDRESSES: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov> and search for FWS–R7–SM–2011–0068, which is the docket number for this rulemaking.
- *By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503-6199, or hand delivery to the Designated Federal Official attending any of the Federal Subsistence Regional Advisory Council public meetings. See SUPPLEMENTARY INFORMATION for additional information on locations of the public meetings.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov*. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743-9461 or *skessler@fs.fed.us*.

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program (Program). This Program grants a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska. The Secretaries first published regulations to carry out this program in the **Federal Register** on May 29, 1992 (57 FR 22940). These regulations have subsequently been amended several times. This Program is a joint effort between Interior and Agriculture, as a result these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, “Parks, Forests, and Public Property,” and Title 50, “Wildlife and Fisheries,” at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Federal Subsistence Board

Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board comprises:

- A Chair, appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs;
- The Alaska Regional Forester, U.S. Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and public members participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Subsistence Regional Advisory Council (Council). The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

Public Meetings

The Regional Advisory Councils have a substantial role in reviewing subsistence issues and making recommendations to the Board. The Federal Subsistence Board, through the Councils, will hold meetings to accept comments and propose changes to the subsistence take of fish and shellfish during the winter meeting cycle. You may present comments on this rule during those meetings at the following locations in Alaska, on the following remaining dates:

Region 1—Southeast Regional Council	Juneau	March 20, 2012
Region 2—Southcentral Regional Council	Anchorage	March 13, 2012
Region 3—Kodiak/Aleutians Regional Council	Old Harbor	March 22, 2012
Region 4—Bristol Bay Regional Council	Naknek	March 7, 2012
Region 5—Yukon–Kuskokwim Delta Regional Council	Bethel	February 23, 2012
Region 6—Western Interior Regional Council	McGrath	February 29, 2012
Region 7—Seward Peninsula Regional Council	Nome	February 7, 2012
Region 8—Northwest Arctic Regional Council	Kotzebue	March 8, 2012
Region 9—Eastern Interior Regional Council	Fairbanks	February 29, 2012
Region 10—North Slope Regional Council	Barrow	February 16, 2012

Current Rule

In accordance with § __.10(d)(4)(ii), one of the responsibilities given to the Federal Subsistence Board is to determine which communities or areas of the State are rural or nonrural.

The Board determines if a community or area is rural in accordance with established guidelines set forth in § __.15(a). The Board reviews rural determinations on a 10-year cycle and may review determinations out-of-cycle in special circumstances. Once the Board makes a

determination that a community or area has changed from rural to nonrural, a waiting period of 5 years is required for the residents to comply with the change. A change from nonrural to rural would be effective 30 days after publication of the rule.

In 2007, the Board published a final rule, Subsistence Management Regulations for Public Lands in Alaska, Subpart C; Nonrural Determinations (72 FR 25688; May 7, 2007). This rule revised the list of nonrural areas identified by the Board. Only residents of areas identified as rural are eligible to participate in the Federal Subsistence Management Program on Federal public lands in Alaska. The Board changed Adak's status to rural, added Prudhoe Bay to the list of nonrural areas, and adjusted the boundaries of the following nonrural areas: the Kenai Area; the Wasilla/Palmer Area, including Point McKenzie; the Homer Area, including Fritz Creek East (except Voznesenka) and the North Fork Road area; and the Ketchikan Area, including Saxman and portions of Gravina Island. The effective date was June 6, 2007, with a 5-year compliance date of May 7, 2012.

On October 23, 2009, Secretary of the Interior Salazar announced the initiation of a Departmental review of the Federal Subsistence Management Program in Alaska; Secretary of Agriculture Vilsack later concurred with this course of action. The review focused on how the Program is meeting the purposes and subsistence provisions of Title VIII of ANILCA, and how the Program is serving rural subsistence users as envisioned when it began in the early 1990s.

On August 31, 2010, the Secretaries announced the findings of the review, which included several proposed administrative and regulatory changes to strengthen the Program and make it more responsive to those who rely on it for their subsistence uses. One proposal called

for a review, with Council input, of the rural and nonrural determination process and, if needed, recommendations for regulatory changes.

Public Comments and Board Action

The public, Alaska Native organizations, the State, and other groups have had numerous opportunities to comment and consult on rural determinations. The numerous comments received are the foundation of this action, and this rule is in response to the myriad of comments received.

Starting in November of 2009, the Secretarial review was conducted by the Alaska Affairs Office within the Office of the Secretary. Meetings with more than 45 different stakeholder groups were held in 13 different communities throughout Alaska. More than 115 comments from individuals and interested organizations were received. Many of these comments addressed concerns relating to rural and nonrural determinations. These comments were posted on the Departmental website at

<http://www.doi.gov/whatwedo/subsistencereview/index.cfm>.

During the January 18–20, 2011, and January 17–20, 2012, Federal Subsistence Board public meetings, the Board offered a comment period each day for members of the public to speak to any issues related to subsistence issues that were not on the meeting agenda. Several members of the public took the opportunity to voice their concerns and comments on rural and nonrural issues. On January 21, 2011, and January 17, 2012, the Board conducted tribal consultations with Alaska Native organizations to address proposed regulatory changes to the subsistence take of fish and wildlife regulations; a number of Alaska Native organizations again took the opportunity to also express their views on rural and nonrural issues and how they

affected their Tribes and communities. In addition, during Board work sessions held on May 3–4 and July 11, 2011, the Board provided opportunities for members of the public, Tribal representatives, and Council Chairs to comment on rural and nonrural issues. The transcripts for these Board meetings are posted at <http://alaska.fws.gov/asm/board.cfm>.

On January 20, 2012, the Board met to consider the Secretarial directive, consider the Council's recommendations and review all public, Tribal, and Native Corporation comments on rural determinations. After discussion and careful review, the Board voted unanimously to initiate a review of the rural determination process and the 2010 decennial review through publication of a proposed rule. Consequently, based on that action, the Board found that it was in the public's best interest to extend the compliance date of its 2007 final rule (72 FR 25688; May 7, 2007) on rural and nonrural determinations until the review of the rural determination process and decennial review are complete or in 5 years, whichever comes first.

The Board's justification for extending the compliance date is based on the following factors:

- With the overall review of the rural determination process and initiation of the decennial review, there exists the possibility that new rulemaking will be required. By extending the compliance date, the Board will be saving time and resources by avoiding the possibility of repetitive rulemaking; in addition, it will prevent confusion and undue hardship on affected rural users.
- This action would demonstrate a genuine commitment to listening and responding to what the Board heard through public comments, Tribal consultations, and Council recommendations.

- A recently published final rule (76 FR 56109, September 12, 2011) to expand the Board by two public members that represent rural Alaskan subsistence users; this action will give the Board additional perspective on the issues facing rural users.

The Board is publishing this rule without a prior proposal because this action is viewed as an administrative action. You may submit comment and materials on this rule by one of the methods listed in ADDRESSES. We will not accept comments sent by e-mail or fax or to an address not listed in ADDRESSES. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in DATES.

We will post your entire comment on <http://www.regulations.gov>. Before including personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Tribal Consultation and Comment

As expressed in Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and Federally Recognized Indian Tribes (Tribes) as listed in 75 FR 60810 (October 1, 2010) and the relationship required by statute for consultation and coordination with Alaska Native corporations. Consultation with Alaska Native corporations is based on Public Law 108-199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as

amended by Public Law 108-447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: "The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175."

Title VIII of ANILCA provides rights to all Federally qualified rural residents for the subsistence taking of wildlife, fish, and shellfish. However, because tribal members are affected by subsistence regulations, the Secretaries, through the Board, provides Federally recognized Tribes and Alaska Native corporations opportunities to consult on subsistence issues.

The Board engages in outreach efforts for the program to ensure that Tribes and Alaska Native corporations are advised of the mechanisms by which they can participate. The Board provides a variety of opportunities for consultation: commenting on proposed changes to the existing rule; engaging in dialogue at the Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process. The Board is committed to efficiently and adequately providing opportunities to Tribes and Alaska Native corporations for consultation with regard to subsistence rulemaking.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analyses and examined the environmental

consequences of four alternatives. Proposed regulations (subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for a regulatory cycle regarding subsistence hunting and fishing regulations (subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comments received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture–Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of a regulatory cycle for subsistence hunting and fishing regulations. The final rule for subsistence management regulations for public lands in Alaska, subparts A, B, and C, implemented the Federal Subsistence Management Program and included a framework for a regulatory cycle for the subsistence taking of wildlife and fish. The following **Federal Register** documents pertain to this rulemaking:

Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C: Federal Register Documents Pertaining to the Final Rule			
Federal Register citation	Date of publication	Category	Details
57 FR 22940	May 29,	Final Rule	“Subsistence Management Regulations for Public

	1992		Lands in Alaska; Final Rule” was published in the Federal Register .
64 FR 1276	January 8, 1999	Final Rule	Amended the regulations to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. Extended the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or to an Alaska Native Corporation. Specified and clarified the Secretaries’ authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority.
66 FR 31533	June 12, 2001	Interim Rule	Expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings.
67 FR 30559	May 7, 2002	Final Rule	Amended the operating regulations in response to comments on the June 12, 2001, interim rule. Also corrected some inadvertent errors and oversights of previous rules.
68 FR 7703	February 18, 2003	Direct Final Rule	Clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Councils must have an odd number of members.
68 FR 23035	April 30, 2003	Affirmation of Direct Final Rule	Because no adverse comments were received on the direct final rule (67 FR 30559), the direct final rule was adopted.
69 FR 60957	October	Final Rule	Clarified the membership qualifications for

	14, 2004		Regional Advisory Council membership and relocated the definition of “regulatory year” from subpart A to subpart D of the regulations.
70 FR 76400	December 27, 2005	Final Rule	Revised jurisdiction in marine waters and clarified jurisdiction relative to military lands.
71 FR 49997	August 24, 2006	Final Rule	Revised the jurisdiction of the subsistence program by adding submerged lands and waters in the area of Makhnati Island, near Sitka, AK. This allowed subsistence users to harvest marine resources in this area under seasons, harvest limits, and methods specified in the regulations.
72 FR 25688	May 7, 2007	Final Rule	Revised nonrural determinations.
75 FR 63088	October 14, 2010	Final Rule	Amended the regulations for accepting and addressing special action requests and the role of the Regional Advisory Councils in the process.

76 FR 56109	September 12, 2011	Final Rule	Revised the composition of the Board.
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An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available from the office listed under FOR FURTHER INFORMATION CONTACT. The Secretaries determined that the expansion of Federal jurisdiction did not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is

to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the "may significantly restrict" threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the following collections of information associated with the subsistence regulations at 36 CFR 242 and 50 CFR 100: Subsistence hunting and fishing applications, permits, and reports, Federal Subsistence Regional Advisory Council Membership Application/Nomination and Interview Forms (OMB Control No. 1018-0075 expires January 31, 2013).

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not

significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

a. Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

b. Whether the rule will create inconsistencies with other agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy.

Therefore, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant

adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this Program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

Title VIII of ANILCA provides rights to all Federally qualified rural residents for the subsistence taking of wildlife, fish, and shellfish. However, the Board provides Federally recognized Tribes and Alaska Native Corporations an opportunity to consult on all subsistence issues. Consultation with Alaska Native Corporations is based on Public Law 108-199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108-447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: "The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native Corporations on the same basis as Indian tribes under Executive Order No. 13175."

The Secretaries, through the Board, provide a variety of opportunities for tribal consultation: commenting on proposed changes to an existing rule; engaging in dialogue at the Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, e-mail, or phone at any time during the rulemaking process.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;

- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Steve Kessler, Alaska Regional Office, U.S. Forest Service.

List of Subjects**36 CFR Part 242**

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

For the reasons set forth in the preamble, the Federal Subsistence Board, under the authority at 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; and 43 U.S.C. 1733, announces that the compliance date for the nonrural determinations for Prudhoe Bay, and the adjusted boundaries of the nonrural areas of: the Kenai Area; the Wasilla/Palmer Area, including Point McKenzie; the Homer Area, including Fritz Creek East (except Voznesenka) and the North Fork Road area; and the Ketchikan Area, including Saxman and portions of Gravina Island contained in 36 CFR 242.23 and 50 CFR 100.23 as revised on May 7, 2007 (72 FR 25688) is delayed until either the review of the rural determination process and the rural determination findings are completed or 5 years, whichever comes first. A document announcing the compliance date will be published in the **Federal Register** at a later date.

_____/s/ Peter J. Probasco____ February 23, 2012_
16, 2012_

Peter J. Probasco Date
Assistant Regional Director
U.S. Fish and Wildlife Service
Acting Chair, Federal Subsistence Board

_____/s/ Beth G. Pendleton____ February
16, 2012_

Beth G. Pendleton Date
Regional Forester
USDA–Forest Service

